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MENTERI HAL EHWAL DALAM NEGERI, MALAYSIA & ORS.

v.

KARPAL SINGH RAM SINGH

b

SUPREME COURT, KUALA LUMPUR

HASHIM YEOP SANI CJ (MALAYA)

MOHD. AZMI SCJ

GUNN CHIT TUAN SCJ

[SC CIVIL APPEAL NO. 01-16-1989]

21 NOVEMBER 1991

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CRIMINAL PROCEDURE: *Detention order - respondent applied to challenge validity of detention - Detention order cancelled prior to hearing of application - Whether application should be struck off - Costs - Discretion of Judge - Merits - Interpretation of - Internal Security Act 1960, ss. 8(1), 10 - Internal Security (Amendment) Act 1988, s. 5 (1), (2).*

The respondent was detained *vide* a detention order dated 18 December 1987 under the Internal Security Act 1960 (the Act). The order was suspended and finally cancelled on 19 April 1989.

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The respondent however had by an originating summons taken out on 10 February 1989 sought certain declarations from the High Court pertaining to the validity of the restrictions and conditions imposed under the Act.

The originating summons however only came before the learned Judge on 25 April 1989, six days after the detention order was cancelled.

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At the commencement of the proceedings, the respondent sought costs, but the learned Federal Counsel raised the following preliminary objections:

(1) that the matter had become academic and that the originating summons should be struck out with no order as to costs and/or

(2) under s. 5(2) of the Internal Security (Amendment) Act 1988, the respondent had no right to bring the action.

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The learned Judge overruled both the objections and held that before he could exercise his discretion on costs he had to hear the merits of the application in the originating summons. Hence this appeal.

Held:

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[1] Section 5(2) of the 1988 Amendment Act has no general application and does not apply to this particular case as it is restricted to actions, suit, prosecutions or other legal proceedings for or on account of or in respect of anything lawfully done in relation to the detention order or the detention declared lawful and ruled under s. 5(1)

[2] As regards the first preliminary objection, the matter had indeed become academic. There was no living issue before the learned Judge. There was no longer any lawful recipient of any benefit of any declaration sought in the originating summons. It would have been a complete waste of judicial time if the Court were to deal with the merits of the application in the originating summons solely to determine the question of costs.

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[3] The question of costs to be awarded in any particular case depends on the discretion of the Judge. In this case there were sufficient material on which the Judge could have exercised his discretion; however, the learned Judge had not exercised his discretion on the question of costs.

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[Appeal allowed; case to be remitted to High Court for appropriate orders.]

[Bahasa Malaysia translation of headnote]

PROSEDUR JENAYAH: *Perintah tahanan - Responden mencabar keesahan penahanan - Perintah tahanan dibatalkan sebelum perbicaraan permohonan - Samada permohonan wajar dibatalkan - Kos - Budibicara Hakim - Merit - Pentafsiran - Akta Keselamatan Dalam Negeri 1960, ss. 8(1), 10 - Akta Keselamatan Dalam Negeri (Pindaan) 1988, s. 5 (1), (2).*

Responden telah ditahan melalui perintah tahanan bertarikh 18 Disember 1987 dibawah Akta Keselamatan Dalam Negeri 1960 (Akta tersebut). Perintah itu telah digantung dan akhirnya dibatal pada 19 April 1989.

Walau bagaimanapun responden telah melalui satu saman permulaan yang dikeluarkan pada 10 Februari 1988 memohon beberapa perisytiharan dari Mahkamah Tinggi berkaitan dengan keesahan perintah tahanan itu dibawah Akta tersebut dan keesahan sekatan dan syarat yang digubal dibawah Akta tersebut.

Saman permulaan itu hanya diperdengar oleh Hakim yang arif pada 25 April 1989, iaitu 6 hari setelah perintah tahanan itu dibatalkan.

Pada permulaan prosiding responden menuntut kos, tetapi peguam persekutuan yang bijaksana telah menimbulkan bantahan awalan yang berikut:

- (1) perkara itu telah menjadi akademik dan oleh itu saman permulaan itu patut dibatalkan tanpa perintah bagi kos dan/atau
- (2) dibawah s. 5(2) Akta Keselamatan Dalam Negeri (Pindaan) 1988 responden tidak berhak membuat tuntutan tersebut.

Hakim yang arif menolak kedua-dua bantahan dan memutuskan bahawa sebelum beliau boleh menggunakan budibicaranya mengenai kos beliau perlu mendengar merit permohonan dalam saman permulaan. Ini adalah rayuan perayu.

Diputuskan:

[1] Seksyen 5(2) Akta Pindaan 1988 tidak ada penggunaan umum dan tidak sesuai bagi kes ini kerana ia terhad kepada tindakan, guaman pendakwaan atau prosiding undang-undang yang lain bagi apa-apa yang dibuat dengan sah disisi undang-undang berkaitan dengan perintah tahanan atau penahanan yang diisytiharkan sebagai betul dan sah dibawah s. 5(1).

[2] Berkenaan dengan bantahan pertama, perkara ini telah sebenarnya menjadi akademik. Tidak terdapat sebarang isu segar dihadapan Hakim yang arif. Juga, tiada faedah yang akan diperolehi daripada perisytiharan yang dipinta dalam saman permulaan. Adalah satu kerugian masa bagi penghakiman jika Mahkamah terpaksa merujuk kepada merit permohonan bagi menetapkan soal kos.

[3] Dalam kes ini walaupun terdapat bahan yang mencukupi, Hakim yang arif tidak menggunakan budibicaranya atas soal kos.

[Rayuan dibenarkan; kes diremit ke Mahkamah Tinggi untuk perintah bersesuaian.]

Cases referred to:

Sun Life Assurance Co. of Canada v. Jervis [1944] AC 112 (foll)

Loknath Padhan v. Birendra Kumar [1974] AIR SC 505 (foll)

Mohamed Noor bin Othman & Ors. v. Haji Mohamed Ismail bin Haji Ibrahim & Ors. [1988] 1 CLJ (Rep) 224 (foll)

Nkondo & Gumede v. Minister of Law & Order South Africa Law Reports [1986] 2 756 (cons)

a Legislation referred to:

Internal Security Act 1960, ss. 5(2), 8(1), 10
Internal Security (Amendment) Act 1988, s. 5(1), (2)

*For the appellants - Zaleha Zahari, SFC
Karpal Singh in person; M/s. Karpal Singh & Co.*

b**JUDGMENT****Hashim Yeop Sani CJ (Malaya):**

This appeal is against the ruling of the learned Judge (Wan Adnan J) sitting in the High Court, Penang on the preliminary objections raised on behalf of the appellants. Except for the ruling, no other order was made by the learned Judge.

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In his originating summons the respondent had sought for certain declarations from the High Court pertaining to the validity of the order of detention under the Internal Security Act 1960 (the Act) of which the respondent was the subject and also the validity of the restrictions and conditions imposed on the respondent under the Act.

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The background facts may be briefly stated as follows. The respondent was detained under the Act *vide* detention order dated 18 December 1987 issued by the Minister for Home Affairs pursuant to s. 8(1) of the Act. Subsequently on 25 January 1989 an order under s. 10 of the Act was made suspending the detention order subject to certain conditions. The respondent was then released from detention. Then by an order dated 19 April 1989 the detention order was cancelled thus removing all the conditions imposed. The originating summons was taken out on 10 February 1989, that is, after the detention order was suspended but before the detention order was cancelled.

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The originating summons came before the learned Judge on 25 April 1989, that is six days after the detention order was cancelled. At the commencement of the proceeding the respondent asked for costs but the learned Senior Federal Counsel on behalf of the appellants raised two preliminary objections which were enumerated by the learned Judge in his grounds of judgment as follows:

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(1) The matter had by the time it came before the learned Judge become academic and therefore the originating summons should be struck out with no order as to costs; and/or

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(2) Purporting to rely on s. 5(2) of the Internal Security (Amendment) Act 1988 there was no right on the part of the respondent to bring the action and therefore the application should be dismissed.

The learned Judge overruled both the preliminary objections and held that before he could exercise his discretion on costs he had to hear the merits of the application in the originating summons. Thus this appeal.

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We will first deal with the second preliminary objection which is the more simple of the two objections. In our view the learned Judge was perfectly correct in rejecting the argument of the learned Senior Federal Counsel on this point. The argument is not supported by the plain reading of s. 5(2) of the Amendment Act. As the marginal note to s. 5 of the Amendment Act clearly states, the whole section deals with “validation of detention orders and detentions, and indemnity”.

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Looking at the language of s. 5 it is clear to us that subsection (1) provides for the omnibus validation of certain orders made during the period between the date of commencement of the Act and the commencement of the amendment Act. Subsection (2) of s. 5 is, as the learned Judge pointed out, restricted to actions, suits, prosecutions or other legal proceedings for or on account of or in respect of anything lawfully done in relation to the detention order or the detention declared lawful and valid under subsection (1) of s. 5, 5(2) of the Amendment Act has no general application and certainly does not apply to this case.

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As regards the first preliminary objection it is our view that the matter had indeed by the time the originating summons came before the learned Judge, become academic. There was no living issue before the learned Judge. There was no longer any lawful recipient of any benefit of any declaration sought in the originating summons. Cases cited by the learned Judge (*Sun Life Assurance Co. of Canada v. Jervis* [1944] AC 112 HL, *Loknath Padhan v. Birendra Kumar* AIR [1974] SC 505 and *Mohamed Noor bin Othman & Ors. v. Haji Mohamed Ismail bin Haji Ibrahim & Ors.* [1988] 1 CLJ (Rep) 224 constitute ample authorities for the Court not to act in vain. The respondent had by then no real interest in the declarations. It will be a complete waste of judicial time if the Court were to deal with the merits of the application in the originating summons solely to determine the question of costs.

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Much reliance was placed on the South African case of *Nkondo & Gumede v. Minister of Law & Order South Africa* Law Reports [1986] 2756 in particular on a passage which appears in the judgment of Rabie CJ in the appellate Court at p. 769, a xerox copy of which was provided by Mr. Karpal Singh. Three appeals came before the appellate Court and the issues in the first and third of those cases concerned the validity of notices issued by the Minister purporting to act in the terms of a provision of the Internal Security Act. The lower Court confirmed the validity of the notices but on appeal the notices were found to be invalid and the lower Court's judgment set aside. The passage referring to the need to go to the merits before the question of costs could be decided is to be read in that context.

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The question of costs to be awarded in any particular case depends on the discretion of the Judge. The discretion is a judicial discretion and must be exercised according to settled principles. There must be sufficient materials for the Judge to exercise his discretion so that the discretion will not appear to be exercised arbitrarily or capriciously.

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In this case it is common ground that there were sufficient materials before the learned Judge and he could have exercised his discretion. The learned Judge has however not exercised his discretion on the question of costs.

As stated earlier, apart from overruling the preliminary objections, the learned Judge did not make any other order.

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The appeal is accordingly allowed and the case is remitted back to the High Court for the appropriate orders to be made.

Costs in the cause.

Also found at [1992] 1 CLJ 36

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